

HOUSE BILL 3647

By Turner M

AN ACT to enact the "Child Product Safety Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Child Product Safety Act".

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Child" means a person less than fourteen (14) years of age;

(2)

(A) "Children's product" means a product, including, but not limited to, a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

(i) The product is designed or intended for the care of, or use by, a child; or

(ii) The product is designed or intended to come into contact with a child while the product is used.

(B) Notwithstanding any other provision of this section to the contrary, a product is not a "children's product" for the purposes of this act if it may be used by or for the care of a child, but it is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by or for the care of a child, or it is a balloon, medication, drug, or food or is intended to be ingested;

(3) "Commercial user" means any person who deals in children's products or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to children's products, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce children's products;

(4) "Crib" means a bed or containment designed to accommodate an infant;

(5) "Full-size crib" means a full-size crib as defined in Sections 1508.1 and 1508.3 of title 16, Code of Federal Regulations regarding the requirements for full-size cribs;

(6) "Non-full-size crib" means a non-full-size crib as defined in Section 1509.2 of title 16, Code of Federal Regulations regarding the requirements of non-full-sized cribs; and

(7) "Place in the stream of commerce" means to sell, offer for sale, give away, offer to give away, or allow the use of.

SECTION 3.

(a) It shall be an unlawful practice for any commercial user to knowingly remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce a children's product deemed unsafe in accordance with this section.

(b) A children's product is deemed to be unsafe for purposes of this section if it meets any of the following criteria:

(1) It has been recalled for any reason by a federal agency or the product's manufacturer, distributor, or importer and the recall has not been rescinded; or

(2) A federal agency has issued a warning that a specific product's intended use constitutes a safety hazard and the warning has not been rescinded.

(c)

(1) A violation of this section constitutes a violation of the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1.

(2) For the purpose of application of the Tennessee Consumer Protection Act, any violation of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.

SECTION 4.

(a) The division of consumer affairs in the department of commerce and insurance shall:

(1) Create, maintain, and update a comprehensive list of children's products that have been identified as meeting any of the criteria set forth in Section 3 of this act; and

(2) Make the comprehensive list available to the public at no cost, including, but not limited to, posting the list on the internet.

(b) The division of consumer affairs shall not be liable for any civil damages as a result of any acts or omissions undertaken in good faith in the creation, maintenance or updating of the list of children's products in accordance with subsection (a).

SECTION 5.

A children's product deemed unsafe in accordance with this act as a result of a recall or warning issued by a federal agency, may be retrofitted by the manufacturer if the retrofit has been approved by the federal agency issuing the recall or warning or

another federal agency with the authority to approve the retrofit. A retrofitted children's product may be placed in the stream of commerce. A commercial user is responsible for maintaining a record of any notice provided by the manufacturer concerning a retrofitted children's product stating that the retrofit has been approved by the federal agency issuing the recall or warning or another federal agency with the authority to approve the retrofit.

SECTION 6.

(a) A child care center licensed under state law may not use or have on its premises a children's product deemed unsafe in accordance with this act. This subsection (a) does not apply to an antique or collectible children's product if it is not used by, or accessible to, any child in the child care center.

(b) The department of human services shall make the list created by the division of consumer affairs regarding unsafe children's products pursuant to Section 4 of this act, available to child care centers by posting the list on the department's web site or providing electronic access to the list through its web site to the list's posting on the internet by the division of consumer affairs, so that child care centers may more effectively inspect children's products and identify unsafe children's products.

(c)

(1) The department of human services shall prepare a certification form and require each center to complete the certification form during the process of licensing, renewal, or periodic updating.

(2) The department shall retain the certification form completed by each center in each respective center's licensing file.

(d) Each child care center shall:

(1) As part of the licensing, licensing renewal, or periodic inspection process conducted by the department, certify in writing that it has reviewed the list created by the division of consumer affairs regarding unsafe children's products pursuant to Section 4 of this act, and that there are no unsafe products in the center; and

(2) Review the list periodically and make the list accessible to the center staff members and to parents of the children who attend the center.

(e) The department of human services may revoke or refuse to renew the license of any child care center, or refuse to issue a license to a center, should the center not comply with this section.

SECTION 7.

(a) The division of consumer affairs, shall promulgate rules and regulations to effectuate the purposes of this act in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The department of human services shall promulgate rules and regulations to effectuate the purposes of Section 6 of this act in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8. For the purposes of rulemaking, this act shall take effect upon becoming a law, the public welfare requiring it and for all other purposes this act shall take effect July 1, 2008.